UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAMIAN ASIDIAS WHEATLEY,

Plaintiff,

v.

GARY STUMP et al.,

Defendants.
_____/

Case No. 1:24-cv-983

Honorable Paul L. Maloney

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. The Court will grant Plaintiff leave to proceed *in forma pauperis*. (ECF No. 2.) Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

Applying these standards, the Court will dismiss Plaintiff's complaint for failure to state a claim against Defendants Moyer and McCyentyre. The Court will also dismiss, for failure to state a claim, the following claims against Defendants Stump, Klein, Demores, and Valdez: (1) Plaintiff's official capacity claims; (2) any personal capacity claims for declaratory relief; (3) any Eighth Amendment claims premised upon verbal and sexual harassment; and (4) Plaintiff's

Fourteenth Amendment due process and equal protection claims. The following personal capacity claims for damages against Defendants Stump, Klein, Demores, and Valdez remain in the case: (1) Plaintiff's Fourth Amendment claims; and (2) Plaintiff's Eighth Amendment excessive force claims.

Discussion

I. Factual Allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Carson City Correctional Facility (DRF) in Carson City, Montcalm County, Michigan. The events about which Plaintiff complains, however, occurred at the Bellamy Creek Correctional Facility (IBC) in Ionia, Ionia County, Michigan. Plaintiff sues the following IBC personnel in their official and personal capacities: Sergeant Gary Stump; Correctional Officers Joshua Klein, Unknown Demores, and Unknown Valdez; Inspector Unknown Moyer; and Registered Nurse Unknown McCyentyre.

Plaintiff alleges that on January 18, 2022, he was being escorted "over to 8 block from unit 4." (Compl., ECF No. 1, PageID.14.) Plaintiff contends that "multiple defendants [were] purposely telling [him] they [were] going to hurt" him. (*Id.*) Defendant Demores had Plaintiff "bent over fo[r]ward to the point where [Plaintiff] was trip[p]ing over [his] own feet trying to keep up." (*Id.*, PageID.14–15.) Defendant Demores had Plaintiff's arms in the air and had his own arms wrapped around Plaintiff's, causing Plaintiff pain. (*Id.*, PageID.15.) Plaintiff alleges further that he was "also getting choked out to the point where Plaintiff lost consciousness." (*Id.*) Plaintiff claims that Defendants Stump, Valdez, and Demores assaulted Plaintiff "for at least 3 minutes" while escorting him to segregation, and that they ignored Plaintiff's "calls for help." (*Id.*) Plaintiff states that he was handcuffed when the assault occurred. (*Id.*) In his grievance regarding the incident, Plaintiff indicated that while bent over, his pants were ripped off in front of the whole housing

unit, and his genitals were exposed, causing other inmates to laugh. (ECF No. 1-1, PageID.24.) Plaintiff's shirt was cut off as well. (*Id.*) His grievances indicate that Defendant Klein was part of this incident as well. (*Id.*, PageID.24–25.)

That same day, Plaintiff filed a grievance against Defendant Klein. (Compl., ECF No. 1, PageID.11.) Plaintiff claims that Defendant Klein told Plaintiff that he "had [his] kids['] mother['s] address and numbers." (*Id.*) According to Plaintiff, Defendant Klein was "yelling her name and address to everyone." (*Id.*) Defendant Klein told Plaintiff that "he would sexuall[y] get with her just to hurt [Plaintiff]." (*Id.*) Plaintiff's grievance was denied. (*Id.*)

Plaintiff alleges that the assault caused him to have serious shoulder pain and also left bruises on his neck. (*Id.*, PageID.6.) Plaintiff filed a Prison Rape Elimination Act (PREA) grievance on January 21, 2022. (*Id.*, PageID.7.) On January 27, 2022, Defendant Moyer returned the grievance with a note that Plaintiff needed to refile it as a regular grievance. (*Id.*) Plaintiff refiled the grievance, and Defendant Moyer denied it, stating that the grievance raised a duplicate issue. (*Id.*)

Plaintiff was released from segregation (8 block) on February 9, 2022. (*Id.*) Plaintiff went to his assigned cell. (*Id.*) Around 3:00 p.m., Plaintiff was "escorted to the box." (*Id.*) Plaintiff alleges that when he was released from segregation, he was told that he did not have to go to administrative segregation. (*Id.*) He claims, however, that once "Defendants found out they called and got [him] put in administrative segregation even though [Plaintiff] already did [his] time for [his] tickets." (*Id.*)

While on the way to segregation, Plaintiff was told that "they needed bed space." (*Id.*, PageID.9.) He was "taken to the property room cages and waited to be housed." (*Id.*) While Plaintiff was in the property room cage, Defendant Demores walked in and told Plaintiff that he

was taking him to administrative segregation and that if Plaintiff "messed around," Defendant Demores would break his arm. (*Id.*) Plaintiff alleges that Defendant Demores "stated all this in a very aggressive voice like he did with the first incident where [he] popped Plaintiff's arm out of place." (*Id.*)

Plaintiff also states that on an unknown date, Defendant Klein told Plaintiff that "he would beat [him] again like he did to [Plaintiff] while he was a staff member at a placement called Turning Point." (*Id.*, PageID.10.) Plaintiff explains that he was at the Turning Point youth center in 2013 and 2014, and while there, Defendant Klein assaulted him. (*Id.*, PageID.18.) Plaintiff states that Defendant Klein eventually assaulted him while at IBC, presumably a reference to the January 18, 2022, incident. (*Id.*, PageID.10.) Plaintiff filed a grievance about the incident. (*Id.*) However, an unknown sergeant told Plaintiff that he would not get any of his property unless he signed off on the grievance Plaintiff had submitted against Defendant Klein. (*Id.*, PageID.9.) Plaintiff did so because he was in "fear of losing all [his] property." (*Id.*)

On March 3, 2022, Plaintiff "went to court on a forgery ticket for trying to file [his] Step 2 for [his] grievance." (*Id.*, PageID.8.) Plaintiff felt that he was "a victim of IBC administrative punishment due to filing grievances on the staff/defendants." (*Id.*) Plaintiff "beat the ticket on a no[t] guilty verdict." (*Id.*)

Plaintiff claims that he was in administrative segregation for 6 months. (*Id.*, PageID.10.) He was in "constant fear of the defendants contaminating [his] food." (*Id.*) Plaintiff lost 55 pounds while in administrative segregation. (*Id.*) Plaintiff alleges that he was "a constant target for the staff because [he] was filing grievance[s] and following the proper steps to get help." (*Id.*) Plaintiff avers that he was constantly told by staff that "they would set [Plaintiff] up if [he did not] stop." (*Id.*) Plaintiff suggests that he was kept in administrative segregation as punishment for filing

grievances, and that he was "denied access to [his] security classification meetings about [him] getting out and [returning] to general population." (*Id.*, PageID.11.)

Plaintiff goes on to state that Defendant McCyentyre "intentionally [did not] report injuries and put Plaintiff on a callout to be seen by medical staff." (*Id.*, PageID.19.) Plaintiff's exhibits show that on January 30, 2022, Plaintiff submitted a medical kite stating that his shoulder was possibly fractured or out of place. (ECF No. 1-8, PageID.32.) Plaintiff indicated that he could barely move it, and that when he did, he heard a pop. (*Id.*) Non-party Registered Nurse Katherine West told Plaintiff that normal operations would resume "as resources allow[ed]" because of the COVID-19 pandemic, and that Plaintiff should "follow the treatment plan currently in place." (*Id.*) Nurse West also provided a list of stretches to Plaintiff and noted he could purchase ibuprofen or acetaminophen from the prisoner store. (*Id.*) Plaintiff submitted another medical kite on February 7, 2022, stating that the stretches were making the pain worse and that he could not get ibuprofen while on 8 block. (ECF No. 1-9, PageID.33.) Non-party Registered Nurse Jerald Ritz responded that Plaintiff would be scheduled for an assessment. (*Id.*)

Based upon the foregoing, Plaintiff asserts Eighth Amendment excessive force and failure to provide medical care claims. (Compl., ECF No. 1, PageID.3.) Plaintiff also suggests that Defendants violated his Fourteenth Amendment due process and equal protection rights. (*Id.*, PageID.14.) Further, Plaintiff contends that he was verbally and sexually harassed in violation of his Eighth Amendment rights, and that he was forced to undergo an improper strip search, which the Court construes as an alleged violation of the Fourth Amendment. (*Id.*, PageID.13, 16–18.) Plaintiff also avers that Defendant Moyer violated his rights by "not giving [him] a proper or fair process for [his] grievances and tickets." (*Id.*, PageID.16.) Plaintiff seeks a declaratory judgment, as well as compensatory and punitive damages. (*Id.*, PageID.21–22.)

II. Failure to State a Claim

A complaint may be dismissed for failure to state a claim if it fails "to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Id.*; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). The court must determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a "'probability requirement,' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(ii).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to

identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

A. Official Capacity Claims

As noted *supra*, Plaintiff has sued Defendants in their official and personal capacities. Although an action against a defendant in his or her individual capacity intends to impose liability on the specified individual, an action against the same defendant in his or her official capacity intends to impose liability only on the entity that they represent. *See Alkire v. Irving*, 330 F.3d 802, 810 (6th Cir. 2003) (citing *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)). A suit against an individual in his official capacity is equivalent to a suit brought against the governmental entity: in this case, the MDOC. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994). The states and their departments are immune under the Eleventh Amendment from suit in the federal courts, unless the state has waived immunity or Congress has expressly abrogated Eleventh Amendment immunity by statute. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98–101 (1984); *Alabama v. Pugh*, 438 U.S. 781, 782 (1978); *O'Hara v. Wigginton*, 24 F.3d 823, 826 (6th Cir. 1994). Congress has not expressly abrogated Eleventh Amendment immunity by statute, *Quern v. Jordan*, 440 U.S. 332, 341 (1979), and the State of Michigan has not consented to civil rights suits in federal court. *Abick v. Michigan*, 803 F.2d 874, 877 (6th Cir. 1986). In numerous opinions, the United States Court of Appeals for the Sixth Circuit has specifically held that the MDOC is absolutely immune from a § 1983 suit under the Eleventh Amendment. *See, e.g.*, *Harrison v. Michigan*, 722 F.3d 768, 771 (6th Cir. 2013); *McCoy v. Michigan*, 369 F. App'x 646, 653–54 (6th Cir. 2010).

Here, Plaintiff seeks declaratory relief, as well as damages. Official capacity defendants, however, are absolutely immune from monetary damages. *See Will*, 491 U.S. at 71; *Turker v. Ohio*

Dep't of Rehab. & Corr., 157 F.3d 453, 456 (6th Cir. 1988). Defendants are, therefore, entitled to immunity with respect to Plaintiff's official capacity claims for damages.

However, an official capacity action seeking declaratory and injunctive relief constitutes an exception to sovereign immunity. *See Ex Parte Young*, 209 U.S. 123, 159–60 (1908) (holding that the Eleventh Amendment immunity does not bar prospective injunctive relief against a state official). Importantly, "*Ex parte Young* can only be used to avoid a state's sovereign immunity when a 'complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Ladd v. Marchbanks*, 971 F.3d 574, 581 (6th Cir. 2020) (quoting *Verizon Md. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002)).

Plaintiff's complaint does not allege an ongoing violation of federal law or seek relief properly characterized as prospective. Plaintiff has been transferred from IBC to DRF. The Sixth Circuit has held that transfer to another prison facility moots claims for declaratory and injunctive relief. *Kensu v. Haigh*, 87 F.3d 172, 175 (6th Cir. 1996). Underlying the rule is the premise that such relief is appropriate only where plaintiff can show a reasonable expectation or demonstrated probability that he is in immediate danger of sustaining direct future injury as the *result* of the challenged official conduct. *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). Past exposure to an isolated incident of illegal conduct does not, by itself, sufficiently prove that the plaintiff will be subjected to the illegal conduct again. *See, e.g.*, *Lyons*, 461 U.S. at 102; *O'Shea v. Littleton*, 414 U.S. 488, 495– 96 (1974). A court should assume that, absent an official policy or practice urging unconstitutional behavior, individual government officials will act constitutionally. *Lyons*, 461 U.S. at 102; *O'Shea*, 414 U.S. at 495–96. Accordingly, Plaintiff cannot maintain any official

capacity claims for declaratory relief, and his official capacity claims will be dismissed in their entirety.[1]

B. Personal Capacity Claims

1. Fourth Amendment Claims

Plaintiff asserts that during the January 18, 2022, incident involving Defendants Stump, Valdez, Demores, and Klein, Plaintiff's pants were ripped off, his shirt was cut off, and he was strip-searched in front of other inmates. The Court has construed Plaintiff's complaint to assert Fourth Amendment claims premised upon this allegedly improper strip search.

Both the Supreme Court and the Sixth Circuit have recognized that, under the Fourth Amendment, prisoners and detainees may be subjected to strip searches and body-cavity searches without individualized suspicion. *See Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 333–34 (2012) (rejecting the argument that correctional officials need reasonable suspicion to conduct visual body-cavity searches upon inmates at the time they are admitted to the general jail population); *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 575 (6th Cir. 2013) (noting that "suspicionless strip searches [are] permissible as a matter of constitutional law"); *see also Salem v. Mich. Dep't of Corr.*, 643 F. App'x 526, 529 (6th Cir. 2016). Nevertheless, strip searches "may be unreasonable by virtue of the way in which [they are] conducted." *Williams v. City of Cleveland*, 771 F.3d 945, 952 (6th Cir. 2014) (citing *Stoudemire*, 705 F.3d at 574) (holding that searches must be conducted in a manner that is reasonably related to the jail's legitimate objectives and that allegations that female prisoners were forced to sit on a chair and spread their labia in unsanitary conditions and in full view of other prisoners were sufficient to state a claim for unreasonable

[1] To the extent Plaintiff seeks declaratory relief against Defendants in their personal capacities, such claims will be dismissed for the same reason as Plaintiff's claims for declaratory relief against Defendants in their official capacities.

search and seizure). In determining the reasonableness of a search, courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. *Stoudemire*, 705 F.3d at 572 (citing *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).

"There is no question that strip searches may be unpleasant, humiliating, and embarrassing to prisoners, but not every psychological discomfort a prisoner endures amounts to a constitutional violation." *Calhoun v. DeTella*, 319 F.3d 936, 939 (6th Cir. 2003). The Sixth Circuit has recognized some limited circumstances in which a prison strip search may implicate the Fourth Amendment. *See, e.g.*, *Cornwell v. Dahlberg*, 963 F.2d 912, 916 (6th Cir. 1992) (recognizing the facial validity of a Fourth Amendment invasion-of-privacy claim where male prisoners were allegedly strip searched in the prison yard in the presence of other inmates and female officers); *Kent v. Johnson*, 821 F.2d 1220, 1226–27 (6th Cir. 1987) (holding that a Fourth Amendment challenge to a prison policy requiring male prisoners to expose their naked bodies to regular and continuous surveillance by female officers was facially valid).

As noted above, Plaintiff suggests that the search occurred in the housing unit in full view of other inmates. Taking Plaintiff's allegations as true, as the Court must at this stage of proceedings, Plaintiff's Fourth Amendment claims against Defendants Stump, Valdez, Demores, and Klein regarding the strip search may not be dismissed on initial review.[2]

[2] To the extent that Plaintiff contends the strip search itself violated his Eighth Amendment rights, the Sixth Circuit has held that an Eighth Amendment claim is not cognizable when the plaintiff has not alleged any physical injury from the strip search. *See Jackson v. Herrington*, 393 F. App'x 348, 354 (6th Cir. 2010). Although Plaintiff suggests that Defendants Stump, Valdez, Demores, and Klein used excessive force against him during the incident that occurred on January 18, 2022, Plaintiff's complaint is devoid of facts suggesting that the strip search itself caused him physical injury.

2. Eighth Amendment Claims

a. Excessive Force

Plaintiff alleges that Defendants Stump, Valdez, Demores, and Klein violated his Eighth Amendment rights by using excessive force against him on January 18, 2022.

As relevant to excessive force claims, the Eighth Amendment prohibits conditions of confinement which, although not physically barbarous, "involve the unnecessary and wanton infliction of pain." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981) (quoting *Gregg v. Georgia*, 428 U.S. 153, 183 (1976)). Among unnecessary and wanton inflictions of pain are those that are "totally without penological justification." *Id.* However, not every shove or restraint gives rise to a constitutional violation. *Parrish v. Johnson*, 800 F.2d 600, 604 (6th Cir. 1986); *see also Hudson v. McMillian*, 503 U.S. 1, 9 (1992). "On occasion, '[t]he maintenance of prison security and discipline may require that inmates be subjected to physical contact actionable as assault under common law.'" *Cordell v. McKinney*, 759 F.3d 573, 580 (6th Cir. 2014) (quoting *Combs v. Wilkinson*, 315 F.3d 548, 556 (6th Cir. 2002)). Prison officials nonetheless violate the Eighth Amendment when their "offending conduct reflects an unnecessary and wanton infliction of pain." *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Pelfrey v. Chambers*, 43 F.3d 1034, 1037 (6th Cir. 1995)); *Bailey v. Golladay*, 421 F. App'x 579, 582 (6th Cir. 2011).

There is an objective component and a subjective component to this type of Eighth Amendment claim. *Santiago v. Ringle*, 734 F.3d 585, 590 (6th Cir. 2013) (citing *Comstock v. McCrary*, 273 F.3d 693, 702 (6th Cir. 2001)). First, "[t]he subjective component focuses on the state of mind of the prison officials." *Williams*, 631 F.3d at 383. Courts ask "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson*, 503 U.S. at 7. Second, "[t]he objective component requires the pain inflicted to be 'sufficiently serious.'" *Williams*, 631 F.3d at 383 (quoting *Wilson v. Seiter*, 501 U.S. 294,

298 (1991)). "The Eighth Amendment's prohibition of 'cruel and unusual' punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort 'repugnant to the conscience of mankind.'" *Hudson*, 503 U.S. at 9–10 (quoting *Whitley v. Albers*, 475 U.S. 312, 327 (1986)). The objective component requires a "contextual" investigation that is "responsive to 'contemporary standards of decency.'" *Id.* at 8 (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). Although the extent of a prisoner's injury may help determine the amount of force used by the prison official, it is not dispositive of whether an Eighth Amendment violation has occurred. *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010). "When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated . . . [w]hether or not significant injury is evident." *Hudson*, 503 U.S. at 9.

As set forth above, Plaintiff alleges that on January 18, 2022, he was being escorted over to 8 block. Defendant Demores had Plaintiff "bent over fo[r]ward to the point where [Plaintiff] was trip[p]ing over [his] own feet trying to keep up." (Compl., ECF No. 1, PageID.14–15.) Defendant Demores had Plaintiff's arms in the air and had his own arms wrapped around Plaintiff's, causing Plaintiff pain. (*Id.*, PageID.15.) Plaintiff alleges further that he was "also getting choked out to the point where Plaintiff lost consciousness." (*Id.*) Plaintiff claims that Defendants Stump, Valdez, Demores, and Klein assaulted Plaintiff "for at least 3 minutes" while escorting him to segregation, and that they ignored Plaintiff's "calls for help." (*Id.*; *see also* ECF No. 1-1, PageID.24–25.) Plaintiff states that he was handcuffed when the assault occurred. (Compl., ECF No. 1, PageID.15.)

At this stage of the proceedings, the Court must take Plaintiff's factual allegations as true and in the light most favorable to him. Although Plaintiff's allegations lack specificity, particularly

as to how Defendants Stump, Valdez, and Klein assaulted him, the Court will not dismiss Plaintiff's Eighth Amendment excessive force claims against Defendants Stump, Valdez, Demores, and Klein on initial review.

b. Verbal and Sexual Harassment

The Court has construed Plaintiff's complaint to assert Eighth Amendment claims premised upon verbal and sexual harassment against Defendants Stump, Valdez, Demores, and Klein. Plaintiff contends that during the incident on January 18, 2022, these individuals "sexually humiliated" him during the allegedly improper strip search. (Compl., ECF No. 1, PageID.13.) Plaintiff alleges further that Defendant Klein harassed him by mentioning that he would "sexuall[y] get with" the mother of Plaintiff's children "just to hurt [Plaintiff]." (*Id.*, PageID.11.) Moreover, Plaintiff avers that on February 9, 2022, Defendant Demores threatened to break Plaintiff's arm if Plaintiff "messed around." (*Id.*, PageID.9.)

First, with respect to the comments allegedly made by Defendants Klein and Demores, the use of harassing, degrading, or threatening language by a prison official, although unprofessional and deplorable, does not rise to constitutional dimensions. *See Ivey v. Wilson*, 832 F.2d 950, 954–55 (6th Cir. 1987) (per curiam); *see also Johnson v. Dellatifa*, 357 F.3d 539, 546 (6th Cir. 2004) (holding that harassment and verbal abuse do not constitute the type of infliction of pain that the Eighth Amendment prohibits); *Wingo v. Tenn. Dep't of Corr.*, 499 F. App'x 453, 455 (6th Cir. 2012) (noting that "[v]erbal harassment or idle threats by a state actor do not create a constitutional violation and are insufficient to support a section 1983 claim for relief" (citing *Ivey*, 832 F.2d at 955)); *Miller v. Wertanen*, 109 F. App'x 64, 65 (6th Cir. 2004) (affirming district court's conclusion that verbal harassment in the form of a threatened sexual assault "was not punishment that violated Miller's constitutional rights" (citing *Ivey*, 832 F.2d at 955)); *Murray v. U.S. Bureau of Prisons*, No. 95-5204, 1997 WL 34677, at *3 (6th Cir. Jan. 28, 1997) ("Although we do not

condone the alleged statements, the Eighth Amendment does not afford us the power to correct every action, statement, or attitude of a prison official with which we might disagree.").[3] Accordingly, any intended Eighth Amendment claims premised upon Defendants Demores and Klein's verbal harassment will be dismissed.

With respect to Plaintiff's assertion that he was "sexually humiliated" by Defendants Stump, Demores, Valdez, and Klein on January 18, 2022, "[f]ederal courts have long held that sexual abuse is sufficiently serious to violate the Eighth Amendment[;] [t]his is true whether the sexual abuse is perpetrated by other inmates or by guards." *Rafferty v. Trumbull Cnty.*, 915 F.3d 1087, 1095 (6th Cir. 2019) (citations omitted); *Bishop v. Hackel*, 636 F.3d 757, 761 (6th Cir. 2011) (discussing inmate abuse); *Washington v. Hively*, 695 F.3d 641, 642 (7th Cir. 2012) (discussing abuse by guards).

However, some courts, including the Sixth Circuit, have held that minor, isolated incidents of sexual touching coupled with offensive sexual remarks also do not rise to the level of an Eighth Amendment violation. *See, e.g.*, *Solomon v. Mich. Dep't of Corr.*, 478 F. App'x 318, 320–21 (6th Cir. 2012) (finding that two "brief" incidents of physical contact during pat-down searches, including touching and squeezing the prisoner's penis, coupled with sexual remarks, do not rise to the level of a constitutional violation); *Jackson v. Madery*, 158 F. App'x 656, 662 (6th Cir. 2005), *abrogated on other grounds by Maben v. Thelen*, 887 F.3d 252, 266–67 (6th Cir. 2018) (concluding that correctional officer's conduct in allegedly rubbing and grabbing prisoner's

[3] In *Small v. Brock*, 963 F.3d 539 (6th Cir. 2020), the Sixth Circuit concluded that "unprovoked and repeated threats to a prisoner's life, combined with a demonstrated means to immediately carry out such threat constitute[d] conduct so objectively serious as to be 'antithetical to human dignity.'" *Id*. at 541 (quoting *Hope v. Pelzer*, 536 U.S. 730, 745 (2002)). The conduct in the present case did not involve either a threat to Plaintiff's life or any demonstration of the means to carry it out.

buttocks in degrading manner was "isolated, brief, and not severe" and so failed to meet Eighth Amendment standards); *Johnson v. Ward*, No. 99-1596, 2000 WL 659354, at *1 (6th Cir. May 11, 2000) (holding that male prisoner's claim that a male officer placed his hand on the prisoner's buttock in a sexual manner and made an offensive sexual remark did not meet the objective component of the Eighth Amendment); *Berryhill v. Schriro*, 137 F.3d 1073, 1075 (8th Cir. 1998) (finding that, where inmate failed to assert that he feared sexual abuse, two brief touches to his buttocks could not be construed as sexual assault).

In contrast, repeated and extreme incidents may sufficiently state a claim. For example, the Sixth Circuit found an Eighth Amendment violation when a male prison official sexually harassed a female prisoner by demanding on multiple occasions that the prisoner expose herself and masturbate while the official watched and intimidated her into complying. *Rafferty*, 915 F.3d at 1095–96. The *Rafferty* court noted that, in light of the coercive dynamic of the relationship between prison staff and prisoners, such demands amount to sexual abuse. *Id.* at 1096.

Rafferty, however, is distinguishable from Plaintiff's claim. Here, Plaintiff alleges only that he was "sexually humiliated" during the incident that occurred on January 18, 2022. He has not alleged that any of the defendants involved in that incident (Stump, Valdez, Demores, and Klein) made sexual comments or that they demanded that Plaintiff engage in sexual conduct. Moreover, while the Court does not minimize Plaintiff's experience, nothing in the complaint suggests that any of these individuals physically touched Plaintiff in a sexual way. Plaintiff's claims concerning the strip search are more properly addressed under the Fourth Amendment, as set forth *supra*. Accordingly, any Eighth Amendment claims against Defendants Stump, Valdez, Demores, and Klein premised upon sexual harassment will also be dismissed.

c. Denial of Medical Care

Plaintiff contends that Defendant McCyentyre violated his Eighth Amendment rights by "intentionally [failing to] report injuries and put Plaintiff on a callout to be seen by medical staff." (Compl., ECF No. 1, PageId.19.)

The Eighth Amendment prohibits the infliction of cruel and unusual punishment. U.S. Const. amend. VIII. The Eighth Amendment obligates prison authorities to provide medical care to incarcerated individuals, as a failure to provide such care would result in unnecessary suffering without serving any penological purpose. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976) "The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency." *Id.* at 103–04. The Eighth Amendment is violated when a prison official is deliberately indifferent to the serious medical needs of a prisoner. *Id.* at 104; *Comstock v. McCrary*, 273 F.3d 693, 702 (6th Cir. 2001).

"To satisfy the subjective component, the plaintiff must allege facts which, if true, would show that the official being sued subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded that risk." *Comstock*, 273 F.3d at 703 (citing *Farmer,* 511 U.S. at 837). Deliberate indifference "entails something more than mere negligence," but can be "satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Farmer,* 511 U.S. at 835.

Not every claim by a prisoner that he has received inadequate medical treatment states a violation of the Eighth Amendment. *Estelle*, 429 U.S. at 105. As the Supreme Court explained:

> [A]n inadvertent failure to provide adequate medical care cannot be said to constitute an unnecessary and wanton infliction of pain or to be repugnant to the conscience of mankind. Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become

> a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.

Id. at 105–06 (quotations omitted). Thus, differences in judgment between an inmate and prison medical personnel regarding the appropriate medical diagnoses or treatment are not enough to state a deliberate indifference claim. *Briggs v. Westcomb*, 801 F. App'x 956, 959 (6th Cir. 2020); *Rhinehart v. Scutt*, 894 F.3d 721, 750–51 (6th Cir. 2018); *Darrah v. Krisher*, 865 F.3d 361, 372 (6th Cir. 2017); *Mitchell v. Hininger*, 553 F. App'x 602, 605 (2014).

The Sixth Circuit distinguishes "between cases where the complaint alleges a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment." *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976). "Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law." *Id.*; *see also Rouster v. Cnty. of Saginaw*, 749 F.3d 437, 448 (6th Cir. 2014) (quoting *Jones v. Muskegon Cnty.*, 625 F.3d 935, 944 (6th Cir. 2010)). Further, "[w]here the claimant received treatment for his condition, as here, he must show that his treatment was 'so woefully inadequate as to amount to no treatment at all.'" *Mitchell*, 553 F. App'x at 605 (quoting *Alspaugh v. McConnell*, 643 F.3d 162, 169 (6th Cir. 2011)). He must demonstrate that the care he received was "so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *See Miller v. Calhoun Cnty.*, 408 F.3d 803, 819 (6th Cir. 2005) (quoting *Waldrop v. Evans*, 871 F.2d 1030, 1033 (6th Cir. 1989)).

Here, even assuming that Plaintiff's shoulder condition constitutes a serious medical need, Plaintiff's claim against Defendant McCyentyre is entirely premised upon speculation and conjecture. Although Plaintiff alleges in a conclusory manner that Defendant McCyentyre "intentionally [did not] report injuries and put Plaintiff on a callout to be seen by medical staff,"

Plaintiff alleges no facts and provides no explanation about his assertion that McCyentyre did not "report injuries." (Compl., ECF No. 1, PageID.19.) Indeed, Plaintiff acknowledges that Defendant McCyentyre put Plaintiff on a callout to be seen by medical staff, suggesting that McCyentyre worked to facilitate Plaintiff's receipt of medical care, not to prevent him from receiving such care. Furthermore, although Plaintiff presents the above-discussed conclusory allegation against Defendant McCyentyre, Plaintiff's complaint is wholly devoid of *facts* from which the Court could infer that Defendant McCyentyre was aware of Plaintiff's shoulder condition and deliberately failed to provide treatment. Plaintiff has attached two medical kites to his complaint; however, those kites were reviewed by two other registered nurses, not Defendant McCyentyre. Plaintiff's complaint, as pleaded, is simply insufficient to maintain an Eighth Amendment claim for denial of medical care. Accordingly, Plaintiff's Eighth Amendment claim against Defendant McCyentyre will be dismissed.

3. Fourteenth Amendment Claims

a. Procedural Due Process

The court has construed Plaintiff's complaint to assert a procedural due process claim premised upon his 6-month placement in administrative segregation.

The Supreme Court has held that placement in segregation "is the sort of confinement that inmates should reasonably anticipate receiving at some point in their incarceration." *Hewitt v. Helms*, 459 U.S. 460, 468 (1983). Thus, it is considered atypical and significant only in "extreme circumstances." *Joseph v. Curtin*, 410 F. App'x 865, 868 (6th Cir. 2010). Generally, courts will consider the nature and duration of a stay in segregation to determine whether it imposes an "atypical and significant hardship." *Harden-Bey v. Rutter*, 524 F.3d 789, 794 (6th. Cir. 2008).

In *Sandin v. Conner*, 515 U.S. 472 (1995), the Supreme Court concluded that the segregation at issue in that case (disciplinary segregation for 30 days) did not impose an atypical

and significant hardship. *Sandin*, 515 U.S. at 484. Similarly, the Sixth Circuit has held that placement in administrative segregation for two months does not require the protections of due process. *See Joseph*, 410 F. App'x at 868 (61 days in segregation is not atypical and significant). It has also held, in specific circumstances, that confinement in segregation for a much longer period of time does not implicate a liberty interest. *See, e.g.*, *Jones v. Baker*, 155 F.3d 810, 812–23 (6th Cir. 1998) (two years of segregation while the inmate was investigated for the murder of a prison guard in a riot); *Mackey v. Dyke*, 111 F.3d 460 (6th Cir. 1997) (one year of segregation following convictions for possession of illegal contraband and assault, including a 117-day delay in reclassification due to prison crowding).

Generally, only periods of segregation lasting for several years or more have been found to be atypical and significant. *See, e.g.*, *Selby v. Caruso*, 734 F.3d 554, 559 (6th Cir. 2013) (13 years of segregation implicates a liberty interest); *Harris v. Caruso*, 465 F. App'x 481, 484 (6th Cir. 2012) (eight years of segregation implicates a liberty interest); *Harden-Bey*, 524 F.3d at 795 (remanding to the district court to consider whether the plaintiff's allegedly "indefinite" period of segregation, i.e., three years without an explanation from prison officials, implicates a liberty interest). Put simply, Plaintiff's 6-month stay in administrative confinement does not rise to the level of an atypical and significant hardship.

Accordingly, the Court concludes that, to the extent pled, Plaintiff fails to state a plausible Fourteenth Amendment procedural due process claim premised upon his stay in administrative segregation. Accordingly, any such claims will be dismissed.[4]

[4] Moreover, to the extent Plaintiff alleges that his placement in segregation violated his Eighth Amendment rights, "[b]ecause placement in segregation is a routine discomfort that is a part of the penalty that criminal offenders pay for their offenses against society, it is insufficient to support an Eighth Amendment Claim." *Harden-Bey*, 524 F.3d at 795 (internal quotation marks omitted) (quoting *Murray v. Unknown Evert*, 84 F. App'x 553, 556 (6th Cir. 2003). MoreoveFurthermore,

b. Substantive Due Process

Plaintiff also suggests that Defendants' actions "shock[ed] the [conscience] under community standard[s]." (Compl., ECF No. 1, PageID.21.) The Court, therefore, construes Plaintiff's complaint to assert Fourteenth Amendment substantive due process claims.

"Substantive due process . . . serves the goal of preventing governmental power from being used for purposes of oppression, regardless of the fairness of the procedures used." *Pittman v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs.*, 640 F.3d 716, 728 (6th Cir. 2011) (quoting *Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996)). Specifically, "[s]ubstantive due process 'prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty.'" *Prater v. City of Burnside*, 289 F.3d 417, 431 (6th Cir. 2002) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). "Conduct shocks the conscience if it 'violates the decencies of civilized conduct.'" *Range v. Douglas*, 763 F.3d 573, 589 (6th Cir. 2014) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998)). Here, the Court does not minimize Plaintiff's experience; however, the facts alleged in the complaint fall short of demonstrating the sort of egregious conduct that would support a substantive due process claim.

Moreover, "[w]here a particular [a]mendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that [a]mendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.'" *Albright v. Oliver*, 510 U.S. 266, 273–75 (1994) (quoting *Graham v. Connor*, 490 U.S.

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while Plaintiff states that he was "in constant fear of the defendants contaminating [his] food" and that he lost 55 pounds, he fails to allege facts suggesting that any of the named Defendants did, in fact, contaminate his food and that he suffered any adverse effects from the weight loss. *See, e.g.*, *Frazier v. Michigan*, 41 F. App'x 762, 764 (6th Cir. 2002) (dismissing plaintiff's claims where the complaint did not allege with any degree of specificity which of the named defendants were personally involved in or responsible for each alleged violation of rights).

386, 394 (1989)) (holding that the Fourth Amendment, not substantive due process, provides the standard for analyzing claims involving unreasonable search or seizure of free citizens). If such an amendment exists, the substantive due process claim is properly dismissed. *See Heike v. Guevara*, 519 F. Appx 911, 923 (6th Cir. 2013). In this case, the Eighth Amendment, as well as the Fourth Amendment and the Fourteenth Amendment's Equal Protection Clause, apply to Plaintiff's claims for relief. Consequently, any intended substantive due process claims will be dismissed.

c. Equal Protection

Throughout his complaint, Plaintiff suggests that Defendants violated his rights under the Fourteenth Amendment's Equal Protection Clause.

The Equal Protection Clause of the Fourteenth Amendment provides that a state may not "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. U.S. Const., amend. XIV; *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). To state an equal protection claim, Plaintiff must show "intentional and arbitrary discrimination" by the state; that is, he must show that he "has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

The threshold element of an equal protection claim is disparate treatment. *Scarbrough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 260 (6th Cir. 2006). Further, "'[s]imilarly situated' is a term of art—a comparator . . . must be similar in 'all relevant respects.'" *Paterek v. Vill. of Armada*, 801 F.3d 630, 650 (6th Cir. 2015) (quoting *United States v. Green*, 654 F.3d 637, 651 (6th Cir. 2011)).

Here, Plaintiff fails to identify any comparators and fails to allege any facts suggesting that he was treated differently than others, let alone that the others were similarly situated. Instead, any

allegations of discriminatory treatment are wholly conclusory. Conclusory allegations of unconstitutional conduct without specific factual allegations fail to state a claim under § 1983. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555. Furthermore, even viewing Plaintiff's equal protection claim as a class of one claim, the Court would reach the same conclusion because Plaintiff's equal protection claims are wholly conclusory, and he has alleged no facts that plausibly suggest that his equal protection rights were violated.

Accordingly, for the reasons set forth above, Plaintiff's Fourteenth Amendment equal protection claims will be dismissed.

4. Claim Regarding Defendant Moyer's Handling of Grievances

Plaintiff also claims that Defendant Moyer violated his rights by "not giving [him] a proper or fair process for [his] grievances and tickets." (Compl., ECF No. 1, PageID.16.) However, as discussed below, mishandling or interfering with a grievance is not active unconstitutional behavior.

First, interference with the grievance remedy does not violate due process because Plaintiff has no due process right to file a prison grievance. The courts repeatedly have held that there exists no constitutionally protected due process right to an effective prison grievance procedure. *See Hewitt*, 459 U.S. at 467; *Walker v. Mich. Dep't of Corr.*, 128 F. App'x 441, 445 (6th Cir. 2005); *Argue v. Hofmeyer*, 80 F. App'x 427, 430 (6th Cir. 2003); *Young v. Gundy*, 30 F. App'x 568, 569–70 (6th Cir. 2002); *see also Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996); *Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994) (collecting cases). Michigan law does not create a liberty interest in the grievance procedure. *See Olim v. Wakinekona*, 461 U.S. 238, 249 (1983); *Keenan v. Marker*, 23 F. App'x 405, 407 (6th Cir. 2001); *Wynn v. Wolf*, No. 93-2411, 1994 WL 105907, at *1 (6th Cir. Mar. 28, 1994).

Moreover, actions (or inactions) of Defendant Moyer with regard to the grievance process could not constitute a violation of the First Amendment right to petition the government. The First Amendment "right to petition the government does not guarantee a response to the petition or the right to compel government officials to act on or adopt a citizen's views." *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999); *see also Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 285 (1984) (holding the right to petition protects only the right to address government; the government may refuse to listen or respond).

Finally, Plaintiff has not been barred from all means of petitioning the government for redress of grievances. Even if Plaintiff had been improperly prevented from filing a grievance, his right to petition for redress of his grievances (i.e., by filing a lawsuit) cannot be compromised by his inability to file institutional grievances. The exhaustion requirement only mandates exhaustion of *available* administrative remedies. *See* 42 U.S.C. § 1997e(a). If Plaintiff were improperly denied access to the grievance process, the process would be rendered unavailable, and exhaustion would not be a prerequisite for initiation of a civil rights action. *See Ross v. Blake*, 578 U.S. 632, 640–44 (2016) (reiterating that, if the prisoner is barred from pursuing a remedy by policy or by the interference of officials, the grievance process is not available, and exhaustion is not required); *Kennedy v. Tallio,* 20 F. App'x 469, 470–71 (6th Cir. 2001).

Thus, Plaintiff cannot maintain a claim against Defendant Moyer premised upon interference with the grievance process.

Conclusion

The Court will grant Plaintiff leave to proceed *in forma pauperis*. (ECF No. 2.) Moreover, having conducted the review required by the PLRA, the Court determines that Defendants Moyer and McCyentyre will be dismissed for failure to state a claim under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court will also dismiss, for failure to state a claim, the

following claims against Defendants Stump, Klein, Demores, and Valdez: (1) Plaintiff's official capacity claims; (2) any personal capacity claims for declaratory relief; (3) any Eighth Amendment claims premised upon verbal and sexual harassment; and (4) Plaintiff's Fourteenth Amendment due process and equal protection claims. The following personal capacity claims for damages against Defendants Stump, Klein, Demores, and Valdez remain in the case: (1) Plaintiff's Fourth Amendment claims; and (2) Plaintiff's Eighth Amendment excessive force claims.

An order consistent with this opinion will be entered.

Dated: October 11, 2024

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge